February 27, 2012

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Ms. Cecily Gentles
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Califon, NJ 07830

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Re: FINAL DECISION
Sipos and Gentles v. Hunterdon County Agriculture Development Board
OAL Dkt. No.: ADC 5173-11
Agency Dkt. No.: SADC ID #1272

Ladies and Gentlemen:

Enclosed please find the Final Decision adopted by the State Agriculture Development Committee (SADC) at its February 23, 2012 meeting.

The decision is not official until the SADC approves the February 23, 2012 meeting minutes on March 22, 2012 and the 15-business day gubernatorial veto period expires. N.J.S.A. 4:1C-4f.

If you have any questions or need anything further, then please give me a call.

Respectfully,

Brian D. Smith, Esq.
Chief of Legal Affairs
Enclosure

cc: Susan E. Payne, Executive Director
Jason Stypinski, Esq., DAG

TIBOR SIPOS and CECILY GENTLES,

Petitioners,

vs.

HUNTERDON COUNTY AGRICULTURE DEVELOPMENT BOARD,

Respondent.

STATE OF NEW JERSEY
OAL DKT. NO.: ADC 5173-11
AGENCY REF. NO.: SADC #1272

FINAL DECISION

PROCEDURAL HISTORY

This case arises from an appeal by Tibor Sipos, Jr. and Cecily Gentles (collectively referred to as "Sipos") of a decision by the Hunterdon County Agriculture Development Board ("HCADB" or "board") declaring that property Sipos owns in Tewksbury Township does not satisfy "commercial farm" eligibility criteria as defined in the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. ("RTFA"). As a result of that determination, a nuisance complaint that had been filed on January 16, 2011 with the HCADB against Sipos by adjoining property owners Dennis H. and Geraldine T. McGill ("McGill") was dismissed for lack of jurisdiction by board resolution dated April 14, 2011.

Sipos filed a timely appeal of the HCADB decision with the State Agriculture Development Committee ("SADC"), which forwarded the matter to the Office of Administrative Law ("OAL") on May 6, 2011 as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The administrative law judge ("ALJ" or "judge") heard the case by way of cross-motions for summary decision filed by Sipos and the HCADB on October 12, 2011, on the issue of whether the Tewksbury Township property qualified as a "commercial farm" under the RTFA. On October 26, 2011, Sipos filed a reply brief and the OAL record closed.

In an Initial Decision dated December 6, 2011, the ALJ granted the HCADB's motion and denied Sipos's motion, concluding that the Tewksbury property did not qualify as a "commercial farm". Exceptions to the Initial Decision were filed with the SADC by Sipos on December 14 and 16, 2011, and a reply to Sipos's exception was filed by the board on December 27, 2011.

The 45-day period within which the SADC was required to file a Final Decision expired on January 20, 2012, prior

to the SADC's regular monthly meeting on January 26, 2012. Accordingly, the SADC sought from and was granted a 45-day extension by the OAL by order dated January 20, 2012.

FINDINGS OF FACT

The testimonial and documentary record before the HCADB, and the documentary record before the OAL, were undisputed by the parties, and the facts that follow are drawn from those records. Sipos is the owner of and resides at property having a street address of 2 Country Lane, Califon, NJ and designated on the Tewksbury Township, Hunterdon County tax map as Block 6, Lot 36.01 ("Tewksbury property"). McGill owns and resides at 4 Country Lane, Califon, NJ, next door to Sipos's property.

The Tewksbury property is approximately 4.8 acres and is not entitled to differential property taxation under the Farmland Assessment Act, N.J.S.A. 54:4-23.1, et seq. ("FAA"). In addition to the Sipos residence, the property contains the administrative and business offices of Frog Hollow Farm, LLC ("Frog Hollow"), whose Managing Member is Sipos. The agricultural activity conducted by Frog Hollow on the Tewksbury property consists of raising and selling approximately 5 goats, 8 roosters and 120 chickens from which eggs are produced for retail sale, and the marketing and distribution for retail sale of "Grandma C's Salsa". The salsa is produced at an off-site facility registered with the U. S. Food and Drug Administration.

Sipos Farm, LLC owns approximately 142 acres of farmland on Old Turnpike Road designated on the Washington Township, Morris County tax map as Block 43, Lot 66 ("Washington property"). The 2011 tax record for the Washington property indicates that the current owner is "Sipos Farm, LLC, ATTN: TIBOR SIPOS", whose address is listed as 37 Country Oaks Road, Lebanon, NJ 08833-3126. The Washington property is farmland assessed. According to the 2011 FA-1 form filed with the Washington Township tax assessor on July 29, 2010, Sipos Farm, LLC reported 94 acres of cropland harvested and 48 acres of appurtenant woodland or wetland, the harvest of which yielded 85 acres of wheat, 5 acres of sweet corn and 4 acres of mixed and other vegetables.

The Washington property was preserved by development easement from George A., Douglas E. and Kurt A. Maier

("Maiers") to the Morris County Board of Chosen Freeholders in a deed dated December 30, 1997 and recorded on January 7, 1998 in the Morris County Clerk's Office in Deed Book 4695, Page 222, with a cost share grant from the SADC. In April 2003 the Maiers sold the preserved Washington property to Yannuzzi, who conveyed the parcel to Sipos Farms, LLC in June 2010.

Frog Hollow's livestock are kept at both the Tewksbury and Washington properties, with pregnant and baby animals kept at the Tewksbury property to keep them secure from predators. The seed and fertilizer necessary for cultivation of the Washington property are delivered to Frog Hollow's business office on the Tewksbury property.

Frog Hollow began operations from the Tewksbury property in April 2010, and the eggs and vegetables produced from the Tewksbury and Washington properties, respectively, as well as "Grandma C's Salsa", have been sold to various farm markets, farm stands and general stores in the Hunterdon and Morris County areas. According to handwritten ledger sheets prepared by Frog Hollow and submitted by counsel in support of its summary decision motion, in 2010 Frog Hollow earned gross income of $4,732.26 from the sale of "Grandma C's Salsa", vegetables and eggs, and reported charitable donations of salsa and green peppers worth $15,435.72 to the Morris County Habitat for Humanity, the Market Street Mission and the First Presbyterian Church of Sparta.[1]

McGill had initially appeared before the Tewksbury Township Committee in September 2010 to complain about the noise from the roosters on the Sipos property. The township committee directed McGill to the HCADB for a determination whether the board had jurisdiction and whether Sipos was entitled to RTFA protection.

McGill's January 16, 2011 complaint against Sipos filed with the board alleged that "roosters screeching day

[1] During the pendency of the summary decision motions before the ALJ, the HCADB objected to Sipos's introduction of an October 10, 2011 certification by Robert A. Bonavito, CPA, who stated that he had prepared Frog Hollow's 2010 tax return and that the IRS Schedule F (Profit and Loss From Farming) reflected gross income of $10,043.00. Like the ALJ, the SADC cannot reconcile the Bonavito certification with the handwritten ledger sheets in the absence of any further documentation from Frog Hollow.

& night [are] interfering with our sleep and peaceful enjoyment of our property". On January 28, 2011, the HCADB administrator requested that Sipos complete and submit a "Commercial Farm Certification" ("certification form") showing that the Tewksbury property satisfied the criteria for "commercial farm" eligibility set forth in the RTFA.

Sipos's certification form, which he signed on February 7, 2011, certified that he was the owner-operator of Frog Hollow, that the nature of the farm business was "vegetables & livestock", that the Tewksbury property was located in a zone permitting agriculture as of December 31, 1997, and that Frog Hollow is five acres or more in size, produces agricultural and/or horticultural products worth $2,500.00 or more annually, and is eligible for farmland assessment.

Attached to the certification form were copies of various documents, some of the contents of which have previously been described in this Final Decision, and also including the following: a letter dated August 18, 2010 from the Morris County Agriculture Development Board advising that the production of salsa from vegetable crops on the Washington property was permitted under the deed of easement; a May 20, 2010 certificate issued by Rutgers Cooperative Extension Service that Frog Hollow's operation on the Tewksbury property was entitled to farmer truck plates and tractor licenses; a letter dated June 30, 2010 from the New Jersey Department of Agriculture approving use of the "Jersey Fresh" logo on "Grandma C's Salsa"; an undated letter from the Morris County Habitat for Humanity thanking Frog Hollow for donating 150 cases of salsa and 5 bushels of green peppers in 2010; and an unsigned, undated "Conservation Planning Worksheet" for Sipos Farm, LLC's Washington property, devoted to "orchard" and "vegetables", "to control water comming [sic] off of the mountain and running through the fields creating an erosion issue". No information was submitted in support of the RTFA criteria that the commercial farm produced agricultural and/or horticultural products worth $2,500.00 or more annually and was eligible for farmland assessment.

The HCADB held a public hearing on the McGill complaint on March 10, 2011, taking testimony and accepting documentary evidence from Sipos. In addition to the facts elicited from testimony before the HCADB, some of which having been previously described in this Final Decision,

Sipos testified that portions of the ingredients of "Grandma C's Salsa" were grown on and harvested from the Washington property. Sipos also testified that Frog Hollow was "one enterprise", encompassing the Tewksbury and Washington properties, and thus constituting a "farm management unit" as required for commercial farm eligibility under the RTFA.

During the hearing on March 10, 2011, the board reviewed the RTFA definition of "commercial farm" and concluded that the farm operated on the Tewksbury property did not meet the annual income production threshold of $50,000.00 for farm property less than 5 acres and did not meet the FAA requirement of at least two (2) successive years of devoting the land to agricultural activity. Finally, the board held that the Tewksbury and Washington properties were not a "farm management unit" because "it does not appear from the evidence presented that the two parcels operate as a single enterprise". A resolution memorializing the HCADB's decision was adopted on April 14, 2011.

By letter dated April 25, 2011, Sipos appealed the HCADB's resolution to the SADC.

INITIAL DECISION

The ALJ's Initial Decision focused on the legislative history of the RTFA's "commercial farm" definition, reviewed the FAA, and discussed the interplay of both statutes as they bear upon RTFA protection of the non-farmland assessed Tewksbury property and its relationship with the noncontiguous, farmland assessed Washington property.

The judge observed that the 1983 version of the RTFA defined a commercial farm as "any place producing agricultural or horticultural products worth $2,500.00 or more annually" and meeting the eligibility criteria for differential property taxation under the FAA. However, in 1996, the State Board of Agriculture ("State Board") proposed

> that the definition should be revamped to remove the reference to a farm as a place. Rather, the [State] Board's proposal makes reference to a farm as a 'farm management unit'. In this way,

> noncontiguous parcels of land, which are part of the same economic enterprise, would be eligible for right-to-farm protection.

The State Board's 1996 proposal also included deletion of the requirement related to farmland assessment, thus allowing RTFA protection solely based on the $2,500.00 annual income threshold. Removal of the farmland assessment requirement, the State Board reasoned,

> would base eligibility for right-to-farm protection on the economic contributions of the farm management unit. While those farms with $2500 and 5 acres would continue to be eligible, this [deletion of the farmland assessment requirement] allows smaller acreage units which produce at the $2500 level or higher to be eligible for right-to-farm protections.

However, when the Legislature enacted the 1998 amendments to the RTFA, the State Board's suggested deletion of the farmland assessment requirement from the definition of "commercial farm" was not included. Instead, the 1998 version of N.J.S.A. 4:1C-3 deleted "place" and replaced it with "farm management unit" but continued the farmland assessment eligibility criterion. That statute has required since 1998 that to be a commercial farm entitled to RTFA protection, the farm management unit must be no less than 5 acres in size, meet the annual $2,500.00 agricultural or horticultural production income threshold and satisfy FAA eligibility criteria; or alternatively, the farm management unit can be under 5 acres in size provided it produces at least $50,000.00 in agricultural or horticultural production income and "otherwise" satisfies FAA eligibility criteria.

The ALJ concluded that the legislative history of the 1998 amendments to the RTFA "reflects the importance of farmland assessment for qualification as a commercial farm." In addition, the absence of any legislative history suggesting that noncontiguous properties forming a farm management unit could be aggregated for FAA purposes, coupled with the language of the FAA itself, led the ALJ to hold that the Tewksbury property, which does not individually qualify for commercial farm eligibility, could not "piggy-back" on the farmland assessed Washington property to become eligible.

The judge determined that the FAA "prohibits the aggregation of parcels to satisfy the eligibility criteria for farmland assessment", basing his opinion on N.J.A.C. 18:15-3.2(e). The regulation requires that individual farmland assessment applications be filed for each commonly-owned but separate, noncontiguous parcel in agricultural or horticultural use in the same taxing district, and does not allow such parcels to be aggregated for the purpose of meeting the minimum five acre requirement. Because the FAA prohibits aggregation, the ALJ reasoned that aggregation is also prohibited under the RTFA.

Based on the FAA's nonaggregation rule for noncontiguous parcels in the same municipality, the ALJ inferred that noncontiguous parcels in separate municipalities could also not be aggregated and would require individual FAA applications. Since N.J.S.A. 4:1C-3 requires that a farm management unit of 5 acres or more satisfy FAA eligibility requirements in order to be a RTFA-protected commercial farm, and since the FAA prohibits aggregation of noncontiguous parcels for the purpose of meeting the minimum 5 acre requirement for FAA eligibility, each individual parcel within the farm management unit cannot qualify for RTFA protection as a commercial farm unless each individual parcel itself is FAA-eligible.

The judge observed that N.J.S.A. 4:1C-3 deals with farm management units under 5 acres by maintaining the requirement that FAA eligibility criteria be satisfied--other than parcel size--in order for such small parcels to be considered "commercial farms" entitled to RTFA protection. This treatment of farm management units, in which a parcel (or parcels) of land totaling 5 acres or more is not exempt from FAA criteria and a parcel of land under 5 acres is also not exempt except for land size, reinforced the judge's view that "each noncontiguous parcel within a farm management unit of five acres or more must be eligible for farmland assessment in order to qualify as a commercial farm".

The ALJ's opinion that a parcel ineligible for farmland assessment could not aggregate with farmland assessed parcels within its farm management unit was supported by an SADC hearing report in the 2004 case of In re Great Swamp Greenhouses, SADC ID#443. In that case, the

agency concluded that a farm management unit comprised of two parcels was a commercial farm when one 51 acre lot in Union Township, Hunterdon County was farmland assessed but the other 9.5 acre lot in Long Hill Township, Morris County, which was the subject of the RTFA dispute, was not farmland assessed. The hearing report determined that Great Swamp Greenhouses was a commercial farm because

> it is a farm management unit, as defined by the [RTFA]; produces agricultural or horticultural products worth $2,500 or more annually; one component of the farm management unit receives farmland assessment; *and the [Long Hill Township] Property at issue which is a component of the farm management unit appears to satisfy the eligibility criteria for differential property taxation* pursuant to the [FAA]. [Emphasis added].

The judge inferred from the quoted portion of the hearing report that the SADC agrees that an individual parcel within a farm management unit *must itself be eligible for* farmland assessment in order for that parcel to be a constituent part of an RTFA-protected commercial farm.

The judge, after deciding that an individual farm parcel cannot be aggregated with another parcel within the same farm management unit to satisfy FAA eligibility criteria, ruled that the Tewksbury property and the Washington property constituted a farm management unit. This determination was based on Frog Hollow's sale of agricultural products, eggs and vegetables, produced from the Tewksbury property and Washington property, respectively; the use of vegetables from the Washington property as ingredients in "Grandma C's Salsa", which is marketed from the Tewksbury property; and the delivery of fertilizer and seed to the Tewksbury property for use in cultivating the Washington property. In essence, the judge believed that the agricultural production and business operations on the Tewksbury and Washington properties constituted a single enterprise under Frog Hollow's aegis.

Finally, despite his conclusion that the Tewksbury property and Washington property were a farm management unit, the ALJ determined that Sipos's 4.8 acre Tewksbury property did not qualify as a commercial farm due to its

ineligibility for farmland assessment because the parcel had been devoted to agricultural activity for less than two (2) years and could not be aggregated with the Washington property.

The December 6, 2011 Initial Decision granted the HCADB's motion for summary decision and directed that any exceptions be filed within thirteen (13) days of the date the decision was mailed to the parties, and replies to any exceptions must be filed within five (5) days of receipt of the exceptions. N.J.A.C. 1:1-18.4(a) and -18.4(d). The Initial Decision was transmitted via email to all parties on December 6, 2011.

Sipos's December 14, 2011 exceptions to the Initial Decision stated that the ALJ's findings were contrary to the RTFA's overall intent to protect agricultural businesses in New Jersey from nuisance complaints. Sipos warned that the Initial Decision would set a dangerous precedent, eliminating RTFA protection for farm operations "that have their buildings, greenhouses, packing houses, grain bins, etc. on less than 5 acres and farm other parcels of land". On December 16, 2011, Sipos submitted a copy of a portion of the Tewksbury Township Right-to-Farm Ordinance and a letter from the municipal zoning officer stating that poultry production is a permitted use in the zone in which the Tewksbury property is located. In conclusion, Sipos asserted that "Farmland Assessment should not be a requirement to provide protection to farmers and their farming operation under the Right to Farm Act". The HCADB's December 27, 2011 reply asserted that Sipos's dissatisfaction with the "commercial farm" definition in N.J.S.A. 4:1C-3 should be addressed by the legislature, not by the executive branch of government.

CONCLUSIONS OF LAW

In order to be eligible for RTFA protection against nuisance complaints and providing preemption of municipal ordinances and county resolutions that unduly interfere with generally-accepted agricultural practices, a farm operation must comply with the definition of "commercial farm" in N.J.S.A. 4:1C-3, which provides as follows:

> "Commercial farm" means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth

> $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.).

Since a "commercial farm" must also be a "farm management unit", the latter is defined in N.J.S.A. 4:1C-3 as

> . . . a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

A commercial farm for RTFA purposes, therefore, includes two (2) distinct possibilities: a farm management unit equal to or greater than 5 acres, and a farm management unit less than 5 acres. Each type of farm management unit carries with it different annual production income requirements and different FAA requirements. For a farm management unit equal to or greater than 5 acres, in addition to the annual $2,500.00 of agricultural or horticultural production income, the unit must "satisfy[] the eligibility requirements for differential property taxation pursuant to the [FAA]"; and for a farm management unit under 5 acres, the unit must produce $50,000.00 in annual agricultural or horticultural production, and "*otherwise* satisfy[] the eligibility requirements for differential property taxation pursuant to the [FAA]". [Emphasis added].

FAA requirements are set forth in N.J.S.A. 54:4-23.1, et seq. Land values for local property tax purposes are reduced for agricultural or horticultural use, provided the land is not less than 5 acres, is actively devoted to such use or uses, and has been so devoted for at least the two (2) successive years immediately preceding the tax year in issue. N.J.S.A. 54:4-23.2 and -23.6. Land at least 5 acres in size is considered actively devoted to agricultural or horticultural use when, on the first 5 acres, the amount of the gross sales of the products from

such use(s) has averaged at least $500.00 each year during the two (2) year period preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales amounting to at least $500.00 and payment will be made to the farmer within a reasonable period of time. N.J.S.A. 54:4-23.5. For each acre of farmland over the 5 acre threshold, active devotion to agricultural or horticultural use is deemed satisfied if the products from such use(s) generate, on average, gross sales of at least $5.00 per additional acre during the two (2) year period preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales amounting to at least $5.00 per additional acre and payment will be made to the farmer within a reasonable period of time; for additional woodland and wetland acreage, the minimum income requirement is $0.50 per acre. Id.

It is readily apparent from the text of N.J.S.A. 4:1C-3 that in order to obtain RTFA protection as a commercial farm, a farm management unit equal to or greater than 5 acres must be eligible to comply with the full panoply of FAA requirements in N.J.S.A. 54:4-23.2 and -23.5, and a farm management unit less than 5 acres must also be eligible to comply with all of the FAA requirements in both statutes except for the minimum parcel size set forth in N.J.S.A. 54:4-23.2.

Further, we concur with the ALJ's determination that the aggregation of separate, noncontiguous parcels in order to achieve the 5 acre minimum for farmland assessment purposes in N.J.S.A. 54:4-23.2 is not permitted by the FAA. The judge correctly observed that N.J.A.C. 18:15-3.2(e) prohibits such aggregation where the separate, noncontiguous parcels, in single ownership, are located in the same municipality; the SADC considers it reasonable to conclude that the prohibition would apply to noncontiguous parcels in separate municipalities. We do observe, however, that any express or implied reference in the Initial Decision to a complete prohibition on aggregation to achieve the 5 acre minimum in the FAA is not entirely accurate. N.J.A.C. 18:15-3.2(c) allows for the aggregation of separate, *contiguous*, singly-owned parcels in the same taxing district, and N.J.A.C. 18:15-3.2(d) allows for the aggregation of separate, *contiguous*, singly-owned parcels that happen to be divided by a municipal boundary line. This technical departure with the ALJ's Initial Decision does not affect the ultimate outcome of the matter, as

neither N.J.A.C. 18:15-3.2(c) nor -3.2 (d) applies to the facts presented here.

The SADC also agrees with the ALJ's rulings, for the reasons he stated, that N.J.S.A. 4:1C-3 requires a farm management unit of 5 acres or more to satisfy FAA eligibility requirements in order to be an RTFA-protected commercial farm, that the FAA prohibits aggregation of noncontiguous parcels for the purpose of meeting the minimum 5 acre requirement for FAA eligibility, and that each individual parcel within the 5 or more acre farm management unit cannot qualify for RTFA protection as a commercial farm unless each individual parcel itself is FAA-eligible. Our determination that the ALJ correctly resolved this issue is not only based on his perceptive analysis of the text of N.J.S.A. 4:1C-3 and the FAA, but also on the SADC's conclusion that the Legislature did not intend parcels less than 5 acres to be protected under the RTFA unless there is not only the substantial, $50,000.00 minimum of annual agricultural production income, but also satisfaction of the criteria for farmland assessment other than the acreage requirement in N.J.S.A. 54:4-23.2. We understand Sipos's contention that orphaned parcels under 5 acres that produce agricultural or horticultural products and/or that contain agricultural infrastructure will not enjoy RTFA protection, but point out that the strong RTFA protection the Legislature afforded parcels less than 5 acres is rationally related to the farmer's responsibility to comply with the FAA in respects other than farm size and to comply with the RTFA's requirement of substantial production income in order for such substandard parcels to be considered a “commercial farm”.

The SADC concurs with the ALJ's legal conclusion, based on the clear language defining “commercial farm” in N.J.S.A. 4:1C-3, that farm management units exceeding 5 acres in size must satisfy not only the overall $2,500.00 annual production income requirement, but also all of the eligibility criteria for farmland assessment. Coupled with the FAA's prohibition on aggregation, the result of our holding is that each component parcel of a greater than 5 acre farm management unit must, individually, comply with both N.J.S.A. 54:4-23.2 and -23.5. While the ALJ correctly stated that the Tewksbury property does not qualify as a commercial farm because it has been the site of agricultural activities for less than 2 years and, therefore, did not comply with one of the requirements of

N.J.S.A. 54:4-23.2, a more fundamental disability of the Tewksbury property arises from the fact that Sipos has claimed that his farm management unit totals approximately 147 acres, including the Washington property. The "commercial farm" definition for farm management units exceeding 5 acres has been construed by the ALJ and the SADC to mean that each component part of the unit must comply with *all* FAA eligibility requirements. Therefore, unless Sipos acquires sufficient additional land adjacent to the Tewksbury property, it cannot in its current configuration satisfy the 5 acre minimum size requirement in N.J.S.A. 54:4-23.2 and, as a consequence, would not be entitled to RTFA-protected, commercial farm status as a component of the 147 acre farm management unit. On the other hand, the 4.8 acre Tewksbury property would be entitled to RTFA protection as a commercial farm if it is an independent farm management unit generating at least $50,000.00 in annual production income and satisfying FAA eligibility criteria, other than farm size, in N.J.S.A. 54:5-23.2 and -23.5. Sipos's situation is to be distinguished from, and our holding here is consistent with, the Great Swamp Greenhouses case, where the non-farmland assessed property was 9.5 acres in size, and eligible to comply with all other farmland assessment requirements, as a component part of a 60 acre farm management unit.

The record before the HCADB and the OAL was inconclusive on the issue of whether the Tewksbury property and Washington property constituted a farm management unit. Initially we note the existence of three (3) entities in this case: Tibor Sipos, Jr., the owner of the Tewksbury property; Sipos Farm, LLC, the owner of the Washington property, apparently under the control of "Tibor Sipos", who may or may not be Tibor Sipos, Jr.; and Frog Hollow Farm, LLC. The SADC believes that proof of a "single enterprise" enabling a commercial farm's entitlement to the strong protections of the RTFA, and particularly in light of the disparate individual and business interests or ownerships presented here, requires reasonably sufficient evidence that includes, but is not limited to, LLC certificates of formation and operating agreements; property tax records; business tax returns; integrated business resources; centralized accounting; a showing of allocation of profits and losses; whether or not the entities have separate bank accounts; and how the entities cover their expenses. No such evidence was presented to

the HCADB or to the ALJ, so the record was limited to consideration of where Frog Hollow livestock was kept, which parcel generated egg sales and which parcel produced vegetables, speculation as to what ingredients in "Grandma C's Salsa" came from the Washington property and how the salsa was marketed from the Tewksbury property, and the delivery of farm commodities to the Tewksbury property. These are legitimate, but inconclusive, factors in determining the existence of a single enterprise, and while the SADC commends the ALJ for his analysis of the limited record before him, the SADC cannot support the judge's ultimate conclusion that the Tewksbury property and Washington property constituted a farm management unit.

Based on the foregoing Findings of Fact and Conclusions of Law, the SADC hereby **AFFIRMS** the Initial Decision granting summary decision to the HCADB holding that the Tewksbury property is not a "commercial farm". The SADC hereby **MODIFIES** the Initial Decision to the extent it found that the Farmland Assessment Act (FAA) prohibits the aggregation of parcels in order to satisfy the requirements for differential property taxation. Instead, the SADC notes that regulations effectuating the FAA, N.J.A.C. 18:15-3.2(c) and -3.2(d), allow for such aggregation where the parcels are contiguous and in single ownership in the same taxing district or in adjoining taxing districts. Finally, the SADC hereby **REJECTS** the determination in the Initial Decision that the Tewksbury and Washington properties constitute a "farm management unit".

IT IS SO ORDERED.

Dated: February 23, 2012 /s/ Monique Purcell
Monique Purcell, Acting Chairperson
State Agriculture Development
Committee

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